

THE LAW OFFICES OF

LORITZ & ASSOCIATES

ORLAND STATE BANK BUILDING • 9533 WEST 143RD STREET
ORLAND PARK, ILLINOIS 60462
708-403-2555

RICHARD F. LORITZ

JULIE BURT

RECORDATION NO. 18134 FILED 1425

MAR 1 1994 8:40 AM

INTERSTATE COMMERCE COMMISSION

Of Counsel

David Dineff
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February 25, 1993

Office of the Secretary
Interstate Commerce Commission
Twelfth Constitution Ave., N.W.
Room 2303
Washington, D.C. 20423

3-060A010

MAR 1 9 36 AM '93
MOTOR CARRIER UNIT

RE: Lease of Locomotive Equipment
National Railway Equipment Company, Lessor
Arcadian Fertilizer, L.P., Lessee

Dear Sir/Madam:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of locomotive equipment and is a primary document dated February 7, 1993. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company
An Illinois Corporation
300 Ninth Street, North
Silvis, IL 61282

Lessee

Arcadian Fertilizer, L.P.
6750 Poplar Avenue
Suite 600
Memphis, TN 38138-7419

Office of the Secretary
February 25, 1993
Page 2

A description of the equipment covered by the document follows:

<u>Road No.</u>	<u>Type</u>	<u>General Description</u>
41	Model 567C	EMD Switch 1 Engine, 6 cylinder, 600 HP

A fee of \$16.00 is also enclosed. Please return the original after recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as one (1) locomotive, Model 567C, EMD Switch 1 Engine, 6 cylinder, 600 Horsepower, with National Railway Equipment Co., as Lessor, and Arcadian Fertilizer, L.P., as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosed copy is identical to the original document which is also enclosed.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: Richard F. Loritz
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

3/1/93

OFFICE OF THE SECRETARY

Richard F. Loritz

Loritz & Associates

Orland State Bank Building

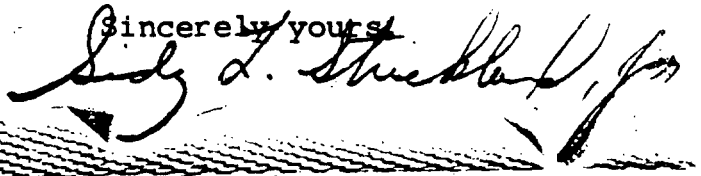
9533 West 143rd Street

Orland Park, Illinois 60462

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/1/93 at 9:40am , and assigned re-recording number(s). 18134

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

AGREEMENT

MAR 1 1994 9:40 AM

INTERSTATE COMMERCE COMMISSION

This agreement ("Agreement") is entered into by and between National Railway Equipment Co. ("Lessor"), an Illinois corporation, with its principal place of business at 300 Ninth Street, North, Silvis, Illinois 61282, and Arcadian Fertilizer, L.P. ("Lessee"), a Delaware limited partnership, with its principal place of business at 6750 Poplar Avenue, Suite 600, Memphis, Tennessee 38138-7419.

W I T N E S S E T H :

Upon the terms and conditions hereinafter set forth, Lessor and Lessee agree as follows:

1. Lease Agreement. Subject to the terms and conditions hereinafter set forth, Lessor shall lease to Lessee, and Lessee shall lease from Lessor, the equipment ("Equipment") described in Exhibit A attached hereto and incorporated herein by reference. Exhibit A may be amended from time to time.

2. Lease Term, Rent and Payment.

(a) The term of the Agreement for the Equipment described herein is for five years commencing on the date set forth in Lessee's separate purchase order attached hereto as Exhibit B and incorporated herein by reference.

(b) Rent shall be paid to Lessor at its address set forth in Section 13. Payments of rent, which includes all maintenance set forth in Section 6, shall be in the amount of Three Thousand Five Hundred Dollars (\$3,500) per month. Rental payments are due in advance, with the first month's rent and a security deposit equal to one month's rent due at the time of execution of this Agreement. Rental payments are due on the first of each month.

(c) The security deposit shall be refunded to Lessee by Lessor at the termination of this Agreement with respect to the Equipment herein leased, provided Lessee has paid or substantially performed all of its obligations with respect to such Equipment.

3. Renewal. This Agreement may be renewed for additional five-year terms for Equipment at rates to be agreed upon provided Lessee is not in default under any of the provisions of this Agreement and that Lessee gives Lessor written notice not less than thirty (30) days prior to the expiration of the term.

4. Default. Upon default by Lessee in the payment of any amount due under the terms of this Agreement, whether as rental or otherwise, or upon the material violation of Lessee of any of the terms and conditions hereof, or if Lessee shall vacate, desert or

abandon the Equipment or permit same to remain vacated, deserted or abandoned for a period of twenty (20) consecutive days and the failure to remedy such default within thirty (30) days after written notice of such default to Lessee, then Lessor at its option by written notice to Lessee shall declare this Agreement to be terminated and all rights of Lessee in and to said Equipment to be at an end, and Lessor shall become entitled to the immediate possession of the Equipment. The declaration of default and the repossession of the Equipment by Lessor shall not excuse Lessee from the liability to Lessor for any rental earned prior to the termination of said Agreement, or for any other expenses incurred hereunder by Lessor prior to the termination of said Agreement. Lessee shall further be liable for and shall pay all reasonable expenses incurred by Lessor in taking said Equipment into its possession upon such or any default by Lessee under the terms of this Agreement.

5. Uses. The Equipment is to be used by Lessee at its Clinton, Iowa plant for switching purposes. Lessee shall use its best efforts to comply with all applicable rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors thereto, with respect to its use and operation of the Equipment while in Lessee's possession.

6. Warranties and Representations.

(a) Lessor warrants the Equipment and all parts and components thereof to be merchantable and fit for Lessee's particular purpose during the term of this Agreement and all renewals thereto. Lessor shall advise Lessee of the Equipment's maximum pulling and pushing capacities by weight and number of cars for fully loaded and empty railcars.

(b) Lessor warrants that it shall maintain the Equipment and all parts and components thereof and that the condition of the Equipment and all parts and components thereof shall at all times during the term of this Agreement and all renewals thereto be in full compliance with all applicable rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration or any successors thereto.

(c) Lessor warrants that it is the lawful owner of the Equipment and the parts and components thereof and guarantees Lessee's peaceful possession thereof at all times during the term of this Agreement.

7. Training. Lessor shall provide training and copies of written procedures to Lessee's employees on the safe operation and routine servicing requirements of the Equipment and shall keep

written records of such training.

8. Maintenance. Lessor shall provide at least one qualified employee with a vehicle to perform routine maintenance on the Equipment at least every sixty (60) days, or more often as required. Lessor shall be responsible for all repairs, labor and materials to effect such repairs, including but not limited to engine failure and main generator failure, for the term of this Agreement and all renewals thereto, with the exception of minor repairs to the Equipment which can reasonably be performed in less than two hours by Lessee, routine servicing as set forth in the written procedures delivered by Lessor to Lessee in accordance with Section 7 hereof, consumable items and any physical damage to the Equipment arising solely out of the negligent operation of the Equipment by Lessee. Lessee shall provide routine service for the Equipment and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs and carbon brushes. The Equipment shall be maintained at facilities provided by Lessee at no cost to Lessor. Lessor shall supply all tooling to perform necessary inspections and repairs. Lessee shall provide water, electricity, air, access to telephone service and a suitable storage area for maintenance repair parts for the Equipment.

9. Fees and Taxes. Lessee shall be liable for and pay and satisfy every lawful claim and liability for fees and taxes (other than federal and state taxes based on Lessor's net income) arising in connection with the use or operation of said Equipment during the term of this Agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties imposed by the state of operation or any other state, governmental, or municipal subdivision in which said Equipment may be situated, or may be operated by Lessee, during the term of this Agreement. Should Lessee in good faith contest the lawfulness of the imposition of any such license fees, taxes, charges, and penalties, Lessor shall cooperate with Lessee in such contest.

10. Insurance.

(a) Lessee shall maintain, during the term of this Agreement and all extensions thereof, the following insurance in minimum limits indicated below:

<u>Insurance</u>	<u>Limits</u>
1. Comprehensive General Liability, maximum self-insured retention \$750,000	\$1,000,000 combined personal injury and property damage, occurrence basis

- | | | |
|----|---|--|
| 2. | Umbrella Excess Liability | \$2,000,000 combined
personal injury and
property damage,
claims-made basis |
| 3. | All Risk Property,
maximum self-insured
retention \$1,000,000 | \$2,000,000 |

All policies providing the insurance above shall name Lessor as an additional insured with respect to Lessee's possession, use and operation of the Equipment described in Exhibit A.

(b) Lessee shall provide Lessor with Certificates of Insurance in evidence of valid insurance required hereunder. All Certificates shall provide that in the event of cancellation before the expiration date, the issuing company will endeavor to give thirty (30) days written notice.

(c) In the event Lessee fails to procure or maintain the insurance required hereunder, Lessor may procure or maintain the insurance. The resultant cost shall be payable to Lessor as part of the next rental payment, and Lessee's failure to pay this cost shall have the same effect as the failure to pay rent.

(d) Lessee shall be responsible for and shall defend, indemnify and hold harmless Lessor, its officers, agents and employees from and against any and all liability, damage, loss, cost, expense, legal expense, claims, demands, suits, actions, judgments or recoveries on account of personal injury, bodily injury to, including death, or destruction, loss of or damage to the property of any person, including the property of Lessee, its officers, agents or employees, Lessor, its officers, agents or employees, occurring directly as a result of or arising out of Lessee's acts, errors or omissions, excepting the negligence, in whole or in part, of Lessor.

(e) Lessor shall maintain, during the term of this Agreement and all extensions thereof, the following insurance minimum limits indicated below:

	<u>Average</u>	<u>Limit</u>
1.	Iowa Worker's Compensation	Statutory
2.	Employer's Liability	
	Each accident	\$1,000,000
	Disease--Policy Limit	\$1,000,000
	Disease--Each Employee	\$1,000,000

- | | | |
|----|------------------------------------|--|
| 3. | Comprehensive General Liability | \$1,000,000 combined personal injury and property damage |
| 4. | Comprehensive Automobile Liability | \$1,000,000 combined personal injury and property damage |
| 5. | Umbrella Excess Liability | \$2,000,000 combined personal injury and property damage |

(f) All policies providing the insurance required above shall be endorsed to provide for a waiver of subrogation against Arcadian Corporation, Arcadian Corporation as General Partner, Arcadian Partners, L.P., Arcadian Fertilizer, L.P., and their respective subsidiaries as may now or hereinafter be constituted.

(g) All policies providing Comprehensive General Liability, Comprehensive Automobile Liability and Umbrella Excess Liability Insurance shall be endorsed to name Arcadian Corporation, Arcadian Corporation as General Partner, Arcadian Partners, L.P. and Arcadian Fertilizer, L.P. as Additional Named Insureds.

(h) Prior to commencing any work hereunder on the premises of Lessee, Lessor shall furnish Lessee with Certificates of Insurance in evidence of valid insurance required hereunder. All Certificates shall provide that in the event of cancellation before the expiration date, the issuing company will endeavor to give thirty (30) days written notice.

(i) Lessor shall, in the event of the use of subcontractor's employees or leased employees, require that the subcontractor or employer of leased employees effect and maintain the same insurance as required hereunder in full compliance with this Section 10 in its entirety, furnishing Lessee with Certificates of Insurance in evidence of compliance.

(j) Lessor shall be responsible for and shall defend, indemnify and hold harmless Lessee, its officers, agents and employees from and against any and all liability, damage, loss, cost, expense, legal expense, claims, demands, suits, actions, judgment or recoveries on account of personal injury, bodily injury to, including death, or destruction, loss of or damage to the property of any person, including the property of Lessor (other than the Equipment described in Exhibit A), its officers, agents or employees, Lessee, its officers, agents or employees, occurring directly as a result of or arising out of Lessor's acts, errors or omissions, excepting the negligence, in whole or in part, of Lessee.

11. Non-Assignment. Lessee agrees that it will not assign, transfer, sublet or lease its rights under this Agreement, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, and will not pledge, mortgage or otherwise encumber or permit to exist upon or be subjected to any lien or charge, any rights or interest of Lessor hereunder. Lessee agrees to keep appropriate signs and/or plaques on the Equipment to clearly show that the Equipment is not the property of Lessee and is owned by others.

12. Return of Equipment. Should Lessee elect not to exercise its option to renew the Agreement as set forth in Section 3 hereof, Lessee shall at its expense return said Equipment to Lessor at the end of the term in a condition as good as that in which it was received, normal wear and tear excepted and further excepting any condition resulting from or attributable to the failure of Lessor to maintain said Equipment in accordance with Section 6 hereof or any breach of warranties and representations set forth in Section 6.

Failure of Lessee to arrange for the return the Equipment to Lessor at Silvis, Illinois within ten (10) days of the expiration of the Agreement term shall be construed as an extension of the Agreement from month to month under the same terms and conditions hereof, at Lessor's sole option.

13. Payments and Notices. All payments or notices hereunder to be sent pursuant to this Agreement shall be in writing and shall be addressed, if to Lessor, to NATIONAL RAILWAY EQUIPMENT CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, and if to Lessee, to ARCADIAN FERTILIZER, L.P., P.O. Box 2966, Clinton, Iowa 52733-2966, or such other address as may be designated from time to time by either party in writing.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed by their duly authorized representatives as of Feb 7, 1993.

LESSOR

LESSEE

NATIONAL RAILWAY EQUIPMENT CO.

ARCADIAN FERTILIZER, L.P.
by ARCADIAN CORPORATION,
its general partner

By: Steven A. Killinger

By: J. A. Campbell

Title: Dir. Sales & Mkt.
DOCS\NATIONAL.LES

Title: PRESIDENT AND CEO

EXHIBIT "A"

LOCOMOTIVE TYPE

ROAD NUMBER

EMD Switch 1 Engine
6 cylinder, Model 567C
600 HP

41

AFFIDAVIT

RECORDATION NO. _____ FILED 1425

MAR 1 1994 9:40 AM

INTERSTATE COMMERCE COMMISSION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned states that he has read the attached document and that the document attached is identical to the complete and original Lease Agreement.

This Affidavit is made pursuant to the procedures in Section 117.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

Richard F. Kany
AFFIANT

Subscribed and Sworn to
before me this 25th day
of February, 1993.

Sarah J. Goodnight
NOTARY PUBLIC

